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IN THE

SUPREME COURT OF THE

UNITED STATES

October Term, 1969

No. 1079, [redacted]

GROVER G. ALEXANDER
Petitioner

v.

CHARLES SHARPE
Respondent

STATE OF MAINE
Respondent

v.

GROVER G. ALEXANDER
Petitioner

SECOND BRIEF IN OPPOSITION
(RESPONSE TO PRINTED PETITION)

Counsel for Respondent:
JOHN W. BENOIT, JR.
Deputy Attorney General
State House, Augusta, Maine

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TABLE OF CONTENTS

Question..... 1

Statement..... 2

Argument..... 7

Conclusion.....10

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QUESTION

Will the Court allow the Petitioner to substitute a late printed petition for an earlier-filed "out-of-size"

petition if the printed petition contains new material, omissions and substituted matter not present in the "out-of-size" petition?

STATEMENT

I.

Respondent, having received Petitioner's "out-of-size" Petition on January 19, 1970 and being informed by the Clerk's Office that a later printed Petition would be substituted for the "out-of-size" Petition, had caused the Brief in Opposition to be prepared; which Brief is filed in this Court. That Brief responds to the "out-of-size" Petition, not to the later late printed Petition.

II.

Respondent moves that the printed Petition (received by Respondent on January 26, 1970), substituted for the "out-of-size" Petition filed on January 15, 1970 (at the close of the 90-day filing period), be dismissed because:

A. The printed Petition contains substantial new material not present in the "out-of-size" Petition, for which exchange was to be made, as follows (references are to the printed Petition):

1. Statement of the Case, second paragraph, p. 6, to second paragraph, p. 18, inclusive;

2. Statement of the Case, first paragraph, p. 20, to top of p. 23, inclusive;

3. Statement of the Case, first paragraph, p. 24;

4. Reasons for Granting Writ, top of page 26 to the second paragraph, p. 27;

5. Reasons for Granting Writ, last paragraph of "A.", p. 28 and last paragraph of "B", p. 29;

6. Points at which Federal Questions were Raised, Etc., p. 31, last five sentences of the last paragraph.

B. The printed Petition omits material which was present in the "out-of-size" Petition, for which exchange was to be made, as follows (references are to the out-of-size Petition);

1. Statement of the Case, last paragraph, p. 7.

C. The printed Petition deleted certain sentences in the "out-of-size" Petition; substituted new sentences and new language, as follows (references are to printed Petition):

1. Statement of the Case, first paragraph, p. 6, ". . . the Court stood up. . . and humiliation. . . "(new); second paragraph, "The exchange began after an incorrect ruling by the Court. . . " was replaced with, "The exchange began after what Petitioner felt to be a series of arbitrary and incorrect rulings. . . . "

2. Reasons for Granting Writ, p. 25, last paragraph, last sentence, " . . . including the dismissal of

the very motions in which these constitutional questions were sought to be raised." (New)

3. Reasons for Granting Writ, p. 28, paragraph A, omission of last sentence, i.e.,"the Maine Court held that Petitioner was not entitled to trial by jury" and substituted:"The disqualification is the distinguishing feature here." The same paragraph also recites new language ". . . together with Petitioner's claim of disqualification of the offended Justice, . . . "

4. Reasons for Granting Writ, p. 29, paragraph B., last sentence is omitted: "The Maine Court held that the sustaining of the Appeal

of August 15, 1968 did not constitute former jeopardy," and replaced with: "It seems more comparable to an acquittal based on a failure of proof as a matter of law, the absent Certificate and Order being the required proof."

ARGUMENT

The reference materials, new, omitted and substituted, change the presentation of this case such that:

A. "Substitution" of the printed Petition for the first Petition should not be allowed. The printed Petition, being a substantial departure from the

"out-of-size" Petition, stands alone outside the 90-day filing period.

B. If allowed, the printed Petition will work a violation of Rule 22(1) requiring the petitioner to file his Petition within a fixed period so that the respondent may, in reliance thereon, know those points to be answered.

C. Respondent, in good faith reliance on the content of the "out-of-size" Petition, prepared the Brief in Opposition, and the Petitioner possesses no right under the Rules to change the content of the Petition which he filed just prior to the expiration

of the 90-day period. Those new matters or omitted matters or substituted matter, coming after the expiration of the 90-day period, come too late. To permit their late filing is to prejudice the respondent working within the Rules.

CONCLUSION

Respondent requests that the substituted printed Petition not be grounds for the Writ; and that it be dismissed.

Respectfully submitted,

John W. Benoit, Jr.

JOHN W. BENOIT, JR.
Deputy Attorney General

CERTIFICATE OF SERVICE

Pursuant to Rule 33 of the Rules of the Supreme Court of the United States, the undersigned, counsel of record for the Respondent, on the date written below, did deposit a copy of the above Brief in Opposition in the United States Post Office at Augusta, Maine, first class postage prepaid, addressed to petitioner's attorney as follows: William A. Mann, Esquire, 308 Colorado Building, Washington, D. C.

Dated: February 10, 1970.

JOHN W. BENOIT, JR.
Deputy Attorney General
State House
Augusta, Maine